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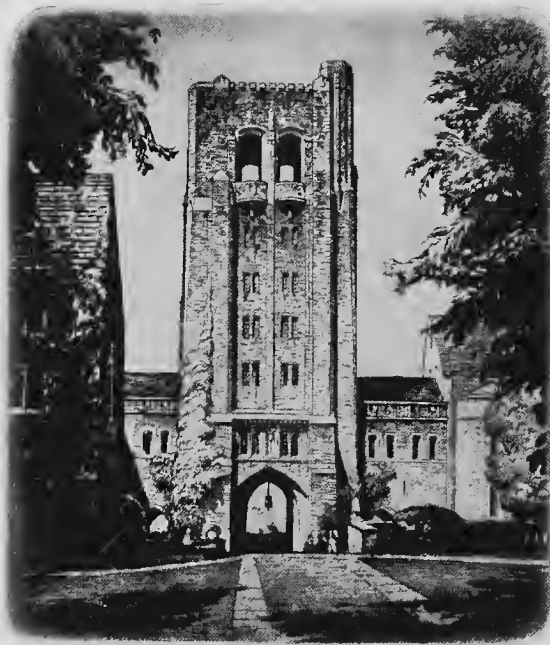
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(THE AMERICAN TORRENS SYSTEM.)

*The*  
Land-Title Registration Act  
*of the*  
State of New York

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INDEXED

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WITH INTRODUCTION

BY

DORR VIELE

AND

JOSEPH C. BAECHER

*Of the New York State Bar, Official Examiners of Title*

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SECOND EDITION

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ALBANY, N. Y.  
MATTHEW BENDER & COMPANY  
INCORPORATED  
1916

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## PREFACE

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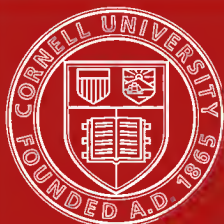
**T**HIS booklet gives in convenient form the Land-Title Registration Statute of New York, and a statement of the aim and method of the Torrens System as therein adopted and available to land owners in this State. The statute is a complete copy of the article of the Real Property Law relating to registering title to real property, in a form given it by the amendments of 1909, 1910 and 1916, which have been the only amendments passed.

August, 1916.

DORR VIELE, Pres.

JOSEPH C. BAECHEER, Sec'y-Treas.

Of The Associated Official Examiners of Title in the State of New York.



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# INTRODUCTORY STATEMENT

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## THE PURPOSE OF REGISTRATION.

### **Purpose.**

The purpose of land title registration (the Torrens System) is to furnish for land an evidence of the title which shall be always available, complete in itself, and as to which the right to rely thereon shall not be restricted to one person, as in the case of an attorney's opinion, but shall extend to all who have occasion to be interested.

### **How Met.**

This purpose is met by the certificate of registered title issued by the County Registrar, who is the County Clerk acting in another capacity. (In the counties of Kings, Westchester and New York the County Register is the Registrar.)

### **Certificate of Title.**

The certificate is a simple statement of the ownership of the land which it describes, giving the owner's name and address and if married his wife's name. It is evidence in any court of the facts on its face and that the provisions of law up to the time of its issue have been complied with. The certificate is issued in duplicate; the original is a page in a book in the Registrar's office, the duplicate is given the owner.

As changes in the title to registered property are made through the Registrar (exhibited in the certificate itself or by endorsements on it attested by his signature) the certificate at all times shows the condition of the title by mere inspection.

### **How Registered Title Transferred.**

Title after it has once been registered is transferred on sale by the Registrar's issuing a new certificate in the name of the purchaser and cancelling the earlier original and duplicate. The keynote of the system is the handling of the title by the certificate. To authorize the Registrar to certify a new owner he requires a

deed in any of the customary forms to be filed with him and the parties to agree in a statement of their intention. The duplicate certificate of the selling owner must be delivered to be cancelled.

When only a part of the property described in a certificate is sold, new certificates may be issued both to the buyer for what is sold and to the seller for what is retained; or, if each parcel is described by itself on the original certificate, that may be cancelled merely as to the land sold, for which the new one is issued. The convenience of this procedure for sub-divided tracts which have been registered as a whole by an original certificate separately describing the subdivision lots, is obvious.

No title is transferred prior to the Registrar's act of certifying the new owner.

### **Incumbrances and Liens.**

In mortgaging, the instrument executed by the owner and statement by the parties are filed with the Registrar and he endorses an entry of the mortgage upon the certificate. This establishes its lien. The mortgagee may hold a certified copy or duplicate original of the mortgage and also have the owner's duplicate certificate left with him during the term of the mortgage, after it has been endorsed to correspond with the original.

Incumbrances not discharged upon an old certificate at the time of issuing a new one, are transferred to the latter.

To affect a title otherwise than by the owner's voluntary acts evidenced by his written instruments, the person desiring to establish a claim or lien must file a proper evidence, such as the transcript of a judgment, to be endorsed on the certificate of the particular land to be charged. Until this is done no lien is created upon the land, the only judgments excepted from this requirement being those in the United States Courts. Taxes laid after registration until they are paid or steps begun to enforce their payment by sale (as a rule, not more than two years after assessment) are a lien in effect without appearing on the certificate. Steps to enforce them can only be begun by filing notice with the Registrar to be entered on the certificate. The only other interests that can arise without being entered thereon are under leases or agreements for a lease, for not over a year, where there is occupation under them; and dominant or servient easements which accrue



in such manner as not to require registration. Registered property cannot be subjected to adverse possession.

### **Advantages.**

The convenience of the certificate chiefly lies in its immediate availability as proof that a title is such as a purchaser or mortgagee desires. It is also valuable for its emphasis upon the union of the possession, right of possession, and right of property. If by force of circumstances one of these elements necessary to a good title becomes unsettled, the fact is at once apparent and it automatically becomes impossible to deal with the land until it is again established. By thus forcing the earliest possible settlement of equivocal situations the system, in addition to its facilitating the handling of marketable titles, tends to prevent their ever becoming permanently unmarketable.

In connection with issuing certificates transferring title, or endorsing mortgage-liens, the Registrar looks at the sufficiency of the instruments filed to express the intention of the parties, a new safe-guard against poor conveyancing.

The inspection of the original certificate proves the title. Without reference to the original the duplicate kept by the owner proves his title; and shows the incumbrances upon it to the date to which it agrees with the original certificate. At the time of closing a purchase, looking over the certificate, the tax receipts since judgment of registration and before tax-sale, the docket of the United States District Court and viewing the premises, discloses all particulars of the title.

Through the continuous availability of this proof and by being transferable without the expense hitherto customary, and without delay after an agreement on terms, registered land acquires a new value as mortgage security and as an asset.

### **THE MODE OF OPERATION.**

Operation of the system in the Registrar's office is extremely simple. His books are the Entry Book, the General Index, and the Title Book. The first lists all papers as they are filed and shows their serial number, kind, the number of the application (if registration is pending but not completed), or certificate to which each relates, and for whom it is filed. The General Index is an alphabetical index of the persons owning registered land or regis-

tered rights in land. The Title Book contains the certificates of title, either first certificates or subsequent transfer certificates, each a separate leaf of the book.

For the convenience of the Registrar in making the proper entries each paper filed with him is required to be endorsed with the name and address of the person in whose behalf it is filed, and the Registrar supplies its serial number from the last previous number in the Entry Book and the number of the application or the certificate to which it relates from the General Index and the Tickler Certificate Book or Title Book.

Example:

“ Filed in behalf of  
Richard Roe  
1000 Main Street  
Buffalo, N. Y.”  
“ Erie County Registrar’s Office  
Filed August 25, 1910  
Serial No. 131  
Relates to *Application* Number 40 ”  
Certificate

In filing a transcript of judgment or other lien to be charged upon registered land, the lienor must endorse on his paper the certificate number of the land to be charged.

In the counties having block indexes an index of registered owners is kept by blocks, and in all counties there is an index of registered lands by brief description.

There is also kept a book of receipts in the handwriting of registered owners, taken on the issuing of the duplicate certificate to them.

### **Fees.**

Statutory fees are fixed at one dollar for entering, filing and indexing any lien or incumbrance; for entering, filing and indexing any instrument cancelling any lien or incumbrance noted on a certificate, fifty cents; for entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another, two dollars for each new certificate issued.

**Connection with Old System.**

Registering a title (which removes it from the old index system in the County Clerk's Office) is done through an action in the Supreme Court to which all persons having an interest in the land are made parties in order that the judgment expressing their interests may be binding and conclusive. The service of the summons and complaint or notice is made as in actions of foreclosure or partition. Notice of pendency of the action in the County Clerk's Lis Pendens Docket refers a person who is making a search to the Registrar's books for subsequent dealings with the property. Dealings during the action are noted on the Tickler Certificate Book and the judgment directs in detail how the certificate in the Title Book shall show the title vested. Registering a title implies that the property will remain under the Registrar's jurisdiction.

The system is a natural evolution of Anglo-Saxon law to supersede the outgrown proof of title through recording deeds and abstracting chains from the indices for successive examinations for attorney's opinion or corporation insurance. Statutes inaugurating it have been adopted in 14 States and an act has been recommended to all the States by the Commissioners on Uniform Legislation. A considerable literature on the subject is available.

DORR VIELE,

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921 Fidelity Building, Buffalo.



# LAWS OF NEW YORK

## Chap. 52

AN ACT relating to real property, constituting chapter fifty of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present. Amended by ch. 627, L. 1910; ch. 547, L. 1916.

## REAL PROPERTY LAW

### ARTICLE 12.

#### REGISTERING TITLE TO REAL PROPERTY.

[Comprising §§ 370 to 435 of the Real Property Law.]

**SECTION 370.** Application to register title to real property.

371. Applications and proceedings to be in the supreme court; title part of special term.

372. County clerks and registers to be registrars of title.

373. Registrar's bond.

374. Deputy registrars' powers and duties.

375. Compensation of registrars and deputy registrars and registration clerks.

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397. Owner's receipt for certificate of title.

398. Certificate to include dealings pending registration.

399. Certificate of title as evidence.

400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.

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402. Fraud; notice only by registration.

403. Memorial to be carried forward.

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- 405. Registered property subject to same rights and burdens as un-registered property.
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- 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.
- 410. Notice of filed papers.
- 411. Addresses of interested parties; notice.
- 412. When a transfer is deemed to be registered.
- 413. New certificates of title.
- 414. Loss of owner's duplicate.
- 415. Mortgages, leases and other liens and charges; may be registered.
- 416. Proceedings to register mortgage, lease or other lien or charge.
- 417. Judgments, decrees, attachments and other liens to be noted on certificate.
- 418. Assignment of mortgage, lease, or other lien or charge.
- 419. Release, discharge or surrender of charge or incumbrance.
- 420. Enforcement of mortgages, charges, liens and incumbrances.
- 420a. Registration under judicial sales.
- 421. Powers of attorney to be filed and registered.
- 422. Reference of doubtful matters to the court.
- 423. Death of owner of registered property; transfer of property.
- 424. Certificate of title during settlement of estate.
- 425. Title derived through execution of a power in a will.
- 426. Assurance fund.
- 427. Compensation from assurance fund.
- 428. Action against assurance fund.
- 429. Restrictions on claims against assurance fund.
- 430. Penalties for fraudulent acts or false certificates.
- 431. Forgery and fraudulent stamping; penalty.
- 432. Fees to be charged.
- 433. Construction of article.
- 434. Form for official examiner's report of title.
- 435. Form for certificate of title.

**§ 370. Application to register title to real property.**

Real property, or any estate, interest, or right therein, the title to which is hereby authorized to be registered, may be brought under the operation of this article by the filing of a complaint, verified as prescribed by the code of civil procedure and praying for registration, with the clerk of the county in which the land, or some portion thereof, is situated. The application may be so made in person by the owner or owners of such property, estate, interest, or right, or by an attorney at law duly authorized so to do. A corporation may also apply by its duly authorized officer or agent. An infant or other person under disability may apply by his legally appointed guardian, or trustee, or committee. The natural person

or corporation, in whose behalf the complaint is filed may be known, and is treated in this article, as the applicant, or plaintiff. The complaint so filed may be known, and is treated in this article, as the application. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 2.

**§ 371. Applications and proceedings to be in the supreme court; title part of special term.**

The application for registration must be made to the supreme court; or to a justice thereof, sitting at a special term in any of the counties within the judicial department where the property is situated, and for that purpose said court shall be always open; and its orders, judgments and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such applications shall have the effect of proceedings in rem against the land, and the judgments shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the application is filed, by the court or a referee, except that an issue of fact may be tried by a jury, in the manner prescribed by the constitution and code of civil procedure. When in any county the amount of business under this article makes it necessary or proper that such business should be attended to by one or more justices of said court assigned for that purpose, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; and said appellate division shall provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article may require and the availability of the supreme court justices make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to have

general supervision and control of the business coming under this article in that county; and so far as is reasonably possible, such designation shall remain unchanged, and such justice shall be retained continuously in such term and part during his term of office unless in the opinion of the appellate division a change is required for the better enforcement or working of this law. One and the same justice may be assigned so as to have such general supervision and control in two or more counties of the judicial district for which he is elected. Other duties may be assigned by such appellate division to such justice, provided that they do not interfere with his work in supervising and controlling the business coming under this article. The justice assigned, as herein provided, to have general supervision and control of the business coming under the article in any county, shall also have general supervision and control of all the official examiners within such county and it shall be his duty to observe and supervise their work as such official examiners, to advise them when necessary and to make any suggestions or recommendations to the appellate division with respect to discipline, suspension or removal of any of them as to him may seem necessary or proper in the interests of the successful operation of this law. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 3.

### **§ 372. County clerks and registers to be registrars of title.**

County clerks in the several counties of the state, except the counties that may have registers, and in the latter counties the registers of said counties shall be "registrars" of titles in their respective counties. All laws relative to registers, county clerks and their deputies shall extend to registrars and their deputies, so far as the same may be applicable, except as in this article otherwise provided. Registrars of titles shall be county officers, within the meaning of the laws of this state.

**Derivation:** L. 1908, ch. 444, § 4.

### **§ 373. Registrar's bond.**

Every registrar, before entering upon his duties as registrar, shall give a bond with sufficient security, to be approved by a jus-



tice of the supreme court, payable to the people of the state of New York, in a penal sum the same as that for his bond as register or county clerk, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do, which bond shall be filed in the office of the secretary of state.

**Derivation:** L. 1908, ch. 444, § 5.

**§ 374. Deputy registrars' powers and duties.**

In any county where the business under this article so requires, the registrar may appoint a chief deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such deputy registrar unless he is an "official examiner of title" as described and required by section three hundred and seventy-seven of this chapter. Deputies may perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar. (Amended by L. 1909, ch. 305; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 6.

**§ 375. Compensation of registrars and deputy registrars and registration clerks.**

Where county clerks and registers are already salaried officials, the local authorities (county officials who provide for county expenses) shall fix their additional compensation as registrars, also the compensation of deputy registrars, the clerks, et cetera, needed to carry on the work under this article. Where a county clerk or a register is compensated directly by the fees paid to himself, his

deputies and assistants, the fees paid to him as registrar shall take the usual course and be used to compensate deputies, clerks, et cetera, at such rates as the registrar may fix, the remainder to belong to him.

**Derivation:** L. 1908, ch. 444, § 7.

**§ 376. Disposition and use of fees received by registrar.**

All fees received by a registrar, for the performance of the duties devolving upon him pursuant to this article, shall be disposed of in such manner as the other fees paid to county clerks and registers, with the following proviso: In those counties where registrars under this article are or shall become salaried officials, all fees paid for the registration of titles shall be kept separate by the registrars and serve, so far as they are necessary or adequate, to pay the expenses of registering titles and the other duties for which charges are made. It shall be the duty of the local authorities who provide for county expenses to provide such accommodations, help, safes, books, papers and for such other expenses as may properly be required by the registrar in the conduct of his office.

**Derivation:** L. 1908, ch. 444, § 8.

**§ 377. Official examiners of title.**

Before application is made for the registration of a title, it must be thoroughly examined and certified by an "official examiner of title." A person duly admitted to practice as an attorney and counselor-at-law in the courts of record of this state, or a corporation duly incorporated under and by virtue of the laws of this state, and by said laws duly authorized to guarantee or insure titles to real property in this state, and no other person, corporation, or institution, may be admitted to the office or position of, and licensed to practice as, an official examiner of title. The court of appeals shall prescribe rules providing for the methods of ascertaining the fitness of individual applicants for license to practice as such examiners, and in doing so, shall take into account the length of time during which applicants have practiced law and the amount of work that they have done in the examination of titles to real property. In the case of experienced examiners of such titles, pro-

vision may be made for licensing them, without examination, to practice as "official examiners of title." After complying with the rules and requirements prescribed by the court of appeals pursuant to this section, an individual applicant may be licensed and admitted to practice as an official examiner of title in this state, by an order of the appellate division of the supreme court of the department in which he resides, or in which he has an office for the regular practice of law. He may be required to give such a bond as the court may prescribe. A corporation may be licensed and admitted to practice as an official examiner of title by an order of the appellate division of the supreme court of the department in which it has its principal place of business, which order shall be made on the certificate of the proper state official that such corporation is duly incorporated under and by virtue of the laws of this state, and by said laws authorized to guarantee or insure titles to real property within this state.

Any official examiner of title may base the report and affidavits required by this article, upon searches and abstracts of title made by a corporation duly organized under and by virtue of the laws of this state, and by said laws duly authorized to make and to certify to searches and abstracts of title. The county clerk in any county, except in counties having a register, and in such counties the register may designate any deputy register, assistant deputy register or deputy county clerk appointed in his office under any provision of law to act as an official examiner of title in his county, or the county clerk or register may appoint one or more attorneys to act as official examiners of title in his county, provided, however, that any deputy or any other person so designated or appointed shall be an attorney and counselor-at-law and licensed to practice as an official examiner of title. The salaries of the official examiners of title designated or appointed by a county clerk or register, or their additional compensation for acting as official examiners of title beyond the salaries attaching to the office of deputy or assistant deputy, shall be fixed by the county clerk or register and shall be paid in the same manner as in the case of other employees of his office, subject to the audit of the local

county or city authorities. The fees for all services rendered by such official examiners so designated or appointed by a county clerk or register shall be received by the county clerk or register and disposed of in the same manner as are other fees received by him.

In case no official examiner of title is designated or appointed in any county, the justice designated by the appellate division to have general supervision and control of the business coming under this article in that county may appoint a competent attorney to act as such official examiner of title upon such terms as may be just and determined by said justice. Any official examiner of title who is an attorney and counselor-at-law shall have power to sit as a referee and may administer oaths and examine witnesses and may at any time apply to the court for directions in any matters concerning his investigations. Said appellate division may advise, admonish, discipline, suspend or remove any official examiner, because of any dishonesty, incompetency, neglect of duty or any other improper conduct or omission, either on its own motion, or on the suggestion or recommendation of the justice of the supreme court having general supervision and control of the business coming under this law in the county in which such official examiner is appointed; and it shall be the duty of said appellate division to co-operate with such justice in endeavoring to retain the highest possible standard of ability, efficiency and honest service for all official examiners acting under and pursuant to this law.

No official examiner who has made the official examiners' report of title to be used in an action for the registration of such title shall act as attorney or counsel in such action, or be otherwise interested in such action. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 9.

**§ 378. What owners may apply; what titles may be registered.**

Application for registration of title may be made by the following persons:

First. The person or persons who claim, singly or collectively, to own in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof, upon the duly acknowledged consent of the owner of the fee, which consent may be incorporated in the contract. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract from a transferrer in possession, or the consent in writing, duly acknowledged, of the proposed vendor in possession and named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceedings or action.

Third. The person or persons who claim, singly or collectively, to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land.

No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate in fee simple in the same property is first registered. When the application is made by the holder of a contract to purchase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale.

It shall not be an objection to bringing real property under this article that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of title when issued. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 10.

**§ 379. Contents of application for registration; other papers to be filed.**

The application for registration shall be made by filing a complaint, as required by section three hundred and seventy of

this chapter. Except as otherwise specified herein, the complaint (and the summons in the action) shall name as parties to the action all persons having or claiming any right or interest in or lien upon the property, or any part thereof, as shown by the examiner's report of title hereinafter described; the owners in fee simple of the surrounding contiguous properties, so far as they are known or can be reasonably ascertained by inquiry on such property; the people of the state of New York; all persons who have filed any caution or cautions against the registration of such property as provided by section three hundred and eighty-three of this chapter, and such additional parties as may be designated by the court in its order directing the issuance and service of the summons; and it shall further designate and make parties to the action all other possible owners and claimants of the property or any right or interest in or lien upon the property or any part thereof as "all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." The complaint and summons shall have the forms and effects prescribed for them by the code of civil procedure. The complaint shall set forth, in addition to any other proper allegations:

(a) The name and post-office address of each of the plaintiffs, and when made by one acting in behalf of another, the name, place of residence and street number, if any, and post-office address and capacity of the person so acting.

(b) Whether or not each of the plaintiffs (except in case of a corporation) is married, and, if married, the name, place of residence and street number, if any, and post-office address of the husband or wife, and, if unmarried, whether he or she has been married, and if he or she has been married, when and how the marriage relation terminated, and, if the marriage was terminated by annulment or divorce, when, where and by what court the annulment or divorce was granted, and for the misconduct, if any, of which party it was granted, and the nature of the misconduct, if any, for which it was granted.

(c) That each of the plaintiffs is of the full age of twenty-

one years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his application is made.

(d) The complaint shall state what claim, if any, the state of New York makes to the property in question or what interest, if any, it has therein other than the general governmental interest or such as exists as to all land in private ownership.

(e) A proper reference to the official examiner's report of title; and to the survey, map or plan of the property; each of which is to be annexed as an exhibit to the complaint, and made and declared by the complaint to be a part thereof.

(f) A statement of the estate, interest or right claimed by the plaintiff in the property sought to be registered.

(g) A prayer that the title be duly registered, as belonging to and vested in the plaintiff or plaintiffs, or as the facts may require at the time of such registration, in the manner set forth in the said report of title or otherwise; and that the court may order the issuance of the summons and service of the summons and the proper notice, as hereinafter directed, on all the defendants who do not duly appear in the action.

The court may require additional facts to be stated in the complaint, and may require the filing of any additional paper or evidence. It may also require the complaint to be amended and reverified as the circumstances of the case may demand or make proper. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 11.

### § 380. **Official examiner's report of title; other evidences of title.**

The official examiner's report of the title referred to in section three hundred and seventy-nine shall accompany the complaint as an exhibit, and be made a part thereof. An individual examiner, who makes the report, shall annex thereto his affidavit that the same is true in every particular, to the best of his knowledge and belief, and that he has employed all usual means and methods for ascertaining the truth thereof, and all the facts and circumstances affecting and concerning the title to said property.

A corporate official examiner, that makes the report, shall annex thereto its policy of guarantee or insurance of the title as shown by the report, for an amount to be fixed by it and the plaintiff or plaintiffs, which amount shall not be less than the last valuation of the property or interest insured, for the purpose of local annual taxation, or its proper proportion thereof; which guarantee or insurance shall be made in favor of the plaintiff, and the people of the state of New York, and shall inure to the benefit of, and be recoverable upon, by any one who may be injured in any way within ten years after the filing of said policy of guarantee or insurance, because of any error, fraud, omission or misdescription in said report. Said official examiner's report shall set forth the exact state and condition of the title sought to be registered in the action, and the names, places of residence with street number, if any, and post-office addresses as far as known or reasonably ascertainable, and the rights or interests, or claimed rights or interests, of the plaintiff and all other persons having or claiming any rights or interests in or liens upon said property or any part thereof, and the names, places of residence with street number, if any, and post-office addresses of the owners in fee simple of the surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties; and, as to actual or possible owners or claimants of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners and claimants of the property sought to be registered, or any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the report, and in the summons and complaint, by the expression "all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." By the statements of fact contained in said report of title, or by separate accompanying affidavits, or by any other additional evidence, if necessary, stating the facts, or by any or all of these, sufficient facts must be shown to satisfy the court that all owners and



claimants of the property sought to be registered, or of any right or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the action. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the action shall be for the court; its decision that such proof is sufficient shall be shown by its making the order for the service of the summons and the commencement of the action as prescribed in this article, and such decision or order shall not be drawn in question after six months from the time when the final judgment in the action is entered. There shall be filed, with said report of title, the abstract of title made or used by the official examiner. The examiner's report of title shall contain a short form of description of the property, the title to which is sought to be registered, which form is to be used in the notice to accompany and be served with the summons, as provided by section three hundred and eighty-six of this chapter. The court shall approve of such form before it is used in said notice and such approval shall be shown by the making of the order for the service of the summons and notice. Said examiner's report shall contain, or be accompanied by, any other or further information that the court may prescribe. The first part of said report shall be a summary of the results thereby shown, which summary shall briefly set forth the exact state of the title to said property. Said report shall be substantially in the form set out in section four hundred and thirty-four of this chapter, with such additions or modifications as the court may order. The examiner of title may receive in evidence and may base his report upon any official search or abstract or any search or abstract issued in regular course of business by any corporation duly organized under and by virtue of the laws of this state and by said laws duly authorized to make and to certify to searches, and abstracts of title or to guarantee or insure titles to real property in this state. It shall be the duty of any public official forthwith to certify the returns of any search upon the requisition of any official examiner of title.

Where the title to the premises sought to be registered is in whole or in part the same as that of another parcel of land title to which has been registered, reference to the earlier abstract on file in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. Reference to official searches duly filed in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. The papers so referred to shall have the same effect as evidence and proof in the action as said official examiner's report of title, or said searches, as the case may be. Where the complaint seeks registration of a title subject to restrictive covenants or agreements, it shall not be necessary to join as defendants those persons who have or claim rights to enforce such covenants and agreements, but unless such persons are joined as defendants the judgment of registration must direct that title be registered subject to such covenants and agreements. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 12.

**§ 381. Survey, map, or plan to be filed.**

There shall be filed with the complaint and annexed thereto as an exhibit and made a part thereof, the survey, map or plan of the land referred to in section three hundred and seventy-nine of this chapter, which shall be made by a competent surveyor approved by the court, and which shall clearly show the exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distance from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey so filed with the complaint must properly connect and harmonize with the survey of such previously registered land. There shall be attached to said survey, map, or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map

or plan of the property described in the official examiner's report of title, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows (stating and describing any encroachments or improper location of buildings, fences or other structures). (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 13.

**§ 382. Notice of application and of pendency of action.**

At the time when the application for registration of any property is filed, the plaintiff shall also cause to be filed a notice thereof in the office of the county clerk and registrar of each county where the property is situated, which notice shall be made and filed in the manner prescribed by section sixteen hundred and seventy of the code of civil procedure, and shall be indexed against the names of the plaintiff and all known defendants except the owners of abutting properties, and shall constitute notice of the pendency of the application, and of the action when the same is commenced, and shall be in all other respects the same as a notice of the pendency of an action under sections sixteen hundred and seventy to sixteen hundred and seventy-four inclusive of the code of civil procedure, except that, if the application be dismissed, or the action discontinued, or in any way terminated other than by registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed. The notice of pendency of action filed with the registrar, as provided in this section, shall also be noted on the "tickler certificate book" as if it were an application, and said notice shall be treated as, and take the place of, the application or complaint in all cases in which this act requires the registrar to deal with the application or complaint. In any place, however, where there is a block or lot system of indexing in use the said notice shall be indexed according to such system. The notice shall be substantially in the form provided by section three hundred and eighty-six of this chapter.

(Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 14.

**§ 383. Filing of caution.**

Any person claiming to have any right or interest in or lien upon any real property or any part thereof the title to which has not been registered, may file with the registrar a written notice, to be styled a "caution," that he requires written notice to be given to him of any application for the registration of the title of said real property. In such notice he shall show how he claims title, right, interest or lien, and shall give his own place of residence with street number, if any, and his post-office address, and that of a person (who may be himself or not), upon whom the notice may be served. In case of any application to register said title, service of such notice shall be made within ten days after the application is filed, by mailing said notice securely inclosed in a post-paid wrapper and directed to the person indicated at the place named. A like cautionary notice may be required by the owner of any land, as to the registration of the title of any or all of the land abutting upon his land, with the like proceedings in all respects. There shall be kept by the registrar a locality index of the cautionary notices, in which the same shall be indexed under the name of the street or road upon which the property referred to in the notice abuts, or if it abuts upon none, under the name of the street or road which is nearest to it. In any place, however, where there is a land map dividing the property into numbered blocks, the index shall be made by block numbers; and if any system of indexing by lot numbers is used, the index lot numbers shall be shown. Such caution shall not be notice, except in an action under this article. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 15.

**§ 384. Agent of nonresident applicant.**

If the applicant is not a resident of the state, he shall file with his application a paper appointing an agent residing in the state,

giving his name in full, place of residence with street number, if any, and post-office address, and shall therein agree that the service of any legal process, in proceedings under or growing out of the application, shall be of the same legal effect, if made on the said agent, as if made on the applicant within the state. If the agent dies, or becomes incapacitated, or removes from the state, the applicant shall forthwith make another appointment; and if he fails to do so within a reasonable time, the court may dismiss the application. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 16.

### **§ 385. Commencement of the action.**

On the complaint and all the other papers and documents filed in the making of the application for registration, the court shall determine whether or not the plaintiff appears to have a title that should be registered. For the purpose of arriving at such determination, the court may require a further examination of the title, to be made by the examiner who made the report, or by another official examiner, and it may also require a further or amended survey, or report, or additional affidavits, or any other proper evidence or proof. In all proceedings subsequent to the determination by the court that the plaintiff appears to have a title that should be registered, the allegations and statements of the examiner's report of title, and of his abstract and searches, and in the survey, shall be prima facie and presumptive evidence of the facts so alleged and stated, and if any defendant controverts any allegation or statement contained in said report of title, abstract, or searches, or survey, the facts controverting such allegation or statement must be specifically pleaded and set forth in the answer separate and apart from the denials and allegations answering the complaint, and except as in this section otherwise provided must be established affirmatively by the defendant pleading or setting forth the same. The court may require, at any time, any amendment or modification of said official examiner's report, or any further or amended survey or report, or any additional evidence or proof that may be necessary or proper. All the allegations and statements in

said report, abstract, searches and survey shall be taken and construed as statements of fact, unless they are expressly declared therein to be conclusions or opinions. Where a party has controverted in his pleading specifically an allegation or statement contained in said report of title, abstract, searches or survey, any party who has appeared in person, or by attorney or counsel at the trial may require that the ordinary rules of evidence and proof, unaffected by this section, shall apply to the matters so controverted.

When the court is satisfied that the plaintiff appears to have a title that should be registered, it shall make an order directing that the action to register such title be commenced by the issuance of the summons, and the service of the summons and the notice required by section three hundred and eighty-six of this chapter. It shall be the duty of the court to make such order whenever it is satisfied that the plaintiff appears to have a title which is, or after proper proceedings in the action can be made free from reasonable doubt; and otherwise it shall be its duty to refuse to make such order. No omission or defect in any order directing an action to register a title to be commenced, or in the papers or proceedings upon or in which such order is made, shall deprive the court of jurisdiction to make such order, or of jurisdiction in the action, or in any way affect the court's jurisdiction. The summons shall name as defendants the persons so named in the title of the action as set forth in the order directing the commencement of the action and shall be made and have the form, and it and said notice shall be served in the manner prescribed by the code of civil procedure for a summons in an action in the supreme court; except that, when service is directed to be made by publication, it shall be ordered to be made in only one newspaper designated by the court once a week for four successive weeks, and such service so made shall be complete at the end of twenty-eight days from and including the day of the first publication; and except further that any defendant on whom personal service is made without the state pursuant to such an order shall appear, answer, or demur within twenty-eight days after such personal service; and except further that an order for service of the summons and said notice shall be a court order,

and the summons served pursuant thereto need not be accompanied by any notice except that prescribed and required by section three hundred and eighty-six of this chapter; and except further as otherwise provided herein. Before making an order for service of the summons and said notice by publication or other form of substituted service, the court must be satisfied by proof of the facts that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons. The question of the sufficiency of such proof shall be for the court; and an allegation, in an affidavit or other duly verified statement recited in said order, that the plaintiff has been or will be unable with due diligence to make personal service of the summons, or that after diligent inquiry a defendant remains unknown to the plaintiff or that the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state, or that the plaintiff cannot, with reasonable diligence, ascertain a place or places where the defendant would probably receive matter transmitted through the post-office, may be taken to be sufficient proof thereof. An order containing such a recital, and made on such proof, shall not be drawn in question after six months from the time when the final judgment in the action is entered. The summons and such notice, the complaint, the official examiner's report of title and the abstract shall be served on the people of the state of New York; and such service may be made by mailing a copy of such summons and notice together with a copy of the complaint and of the official examiner's report of title and abstract securely inclosed in a postpaid wrapper and directed to the attorney-general of the state of New York. Upon and after the issuance of the summons, the court's jurisdiction shall be the same as in an action in the supreme court in which no order for the commencement of the action is required; and the action shall be governed by, and shall proceed according to, the laws of this state and the rules of court, relative to such an action, as far as the same are not expressly abrogated or modified by this article. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 17.

**§ 386. Notice of object of action; copy of complaint.**

The summons, however served, shall be accompanied by a notice of object of action, which shall state the object of the action and describe briefly, but plainly, the property, the title to which is sought to be registered. Said notice shall be approved by the court, and a copy thereof shall be annexed to the order directing the service of the summons and said notice. Said notice shall be substantially as follows: "The object of this action is to register and confirm the title of (name or names and place of residence with street number, if any, and post-office address of plaintiff in full) in the following described property (description as approved by the court)." A copy of the complaint, but not of the official examiner's report of title or abstract or other papers filed with the complaint and application, may be demanded by the attorney of any defendant, and if so demanded must be served, as prescribed by the code of civil procedure. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 18.

**§ 387. Summons and notice to be posted on the land.**

A copy of the summons and notice of object of action, as above described, shall be posted in a conspicuous place on each parcel of land included in the action, at least forty days before application is made for judgment in the action. The affidavit of the person by whom such posting is made shall be proof that such notice was posted in a conspicuous place, and shall be filed with the application for the judgment or before the judgment is entered. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 19.

**§ 388. Guardian ad litem.**

In every action to register title, the court shall make an order appointing a disinterested attorney, other than the official examiner by whom the title was examined and reported and certified, to act as guardian ad litem for all minor parties to the action and for all other parties under disability. The application for the appointment of said guardian may be made by the plaintiff ex parte at any time after the time to answer of such of the defendants as are



served personally has expired, and the service of the summons upon such of the defendants as are not served personally within this state is complete. The guardian ad litem thus appointed upon the application of the plaintiff shall be the attorney-general of the state of New York, unless it appears to the court that the state of New York has or claims some interest adverse to that of the person or persons for whom the attorney-general would thus be appointed guardian ad litem. The question as to the existence of such adverse claim or interest shall be for the court; and an order appointing the attorney-general as such guardian ad litem shall be sufficient proof that no such adverse claim or interest exists. Such an order shall not be drawn in question after six months from the time when the final judgment in action is entered. It shall be the duty of any such guardian ad litem actively to ascertain and protect as far as is reasonably possible, the interests of all minor parties to the action and all other parties under disability. The compensation of such guardian shall be fifteen dollars, unless the court direct otherwise; but the attorney-general shall not receive any compensation for acting as such guardian ad litem. Any other guardian ad litem may also be appointed in the manner set forth in the code of civil procedure for any of the defendants who are infants or persons incapacitated. (Former § 388 repealed and new § 388 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 20.

**§ 389. Any person interested may appear and defend.**

Any person interested in the property, or whose interests may be affected by the judgment in the action, whether specifically named as defendant or not, may enter his appearance and answer the complaint, within the time allowed by this article, or such further time as shall be allowed by the court, and may oppose the application for registration of the property as belonging to the plaintiff, or set up a cross-demand to have the title registered in his own behalf. In either case, he shall state particularly what his interest is and answer the material allegations of the complaint.

**Derivation:** L. 1908, ch. 444, § 21.

**§ 390. Title in lands vested; clouds thereon removed.**

In any action under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the plaintiff or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar, and generally in such an action, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no judgment of registration of a title shall be made or entered until proof is duly made in the action by the report of an official examiner and by the certificate or receipt of the officer entitled to collect the taxes, assessments or water rents, and all taxes, water rents and assessments on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of title. Where the title to be registered is subject to restrictive covenants or agreements, and it shall appear to the court either that said restrictive covenants or agreements have been violated or that by reason of the proper parties not having been joined the court should not proceed to determine whether said restrictive covenants or agreements have or have not been violated, then in either case title may nevertheless be registered; but the judgment of registration must direct the registration to be "subject to any question as to whether covenants (specifying them) have been violated," and the certificate of title shall so note; and then the rights in respect to such covenants of any person interested therein shall not be affected by such judgment or registration. When the land the title to which is to be registered abuts upon any street, avenue, road or way the judgment of registration may pro-

vide for the registration of the applicant's interests or rights in and to such street, avenue, road or way; but if such judgment fail so to provide, then the interests or rights of the applicant in such street, avenue, road or way shall become and be parcel of or appurtenant to the property registered, and shall be included in any conveyance of or incumbrance or lien upon such registered property, unless it is expressly reserved in or excepted from such conveyance, incumbrance or lien. Such express reservation or exception shall be effected only by a clause directly reserving or excepting such interests or rights in such street, avenue, road or way and shall not be implied from the language used in any description of the registered property subsequent to the initial registration thereof. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 22.

**§ 391. Judgments and orders conclusive.**

No judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt. The judgment and any order made and entered in an action under this act shall, except as herein otherwise provided, be forever binding and conclusive upon the state of New York and all persons in the world, whether mentioned and served with the summons and said notice specifically by name, or included in the description, "all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." It shall not be an exception to such conclusiveness that any such person is an infant, lunatic or is under any other disability or is not yet in being. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 23.

**§ 392. Fraud; action to set aside the judgment or to recover the property.**

Any title registration procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in case of a deed obtained by fraud, provided that such proceeding for setting aside the registration shall not injuriously affect the

rights of an innocent purchaser or incumbrancer of the property after such registration, for value and without actual notice of the fraud, and provided further that the action or other proceeding to set aside such registration be commenced within ten years from the time when the final judgment of registration was entered. No action or proceeding shall lie or be commenced, except on the ground of fraud as above stated, to set aside any judgment of registration or to modify or affect the same or for the recovery of registered property or any estate, right or interest in or lien upon the same or any part thereof, or make any entry thereon, adversely to the title or interest registered therein, as directed by a final judgment of the court, unless such action or proceeding is commenced within six months after such judgment of registration is entered.

**Derivation:** L. 1908, ch. 444, § 24.

### **§ 393. Registration of title.**

Upon entering final judgment, a judgment roll must be prepared and filed in the office of the clerk, as provided by the code of civil procedure. The clerk upon payment of a fee of one dollar shall cause a copy of said judgment to be certified and transferred to the "registrar" of his county, who shall forthwith file the same in his office. After the certified copy of the final judgment directing registration of title is duly filed in the registrar's office, the registrar shall proceed to register the title to the real property, estate, right, or interest, pursuant thereto, and issue a certificate or certificates thereof and enter the same as herein prescribed. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 25.

### **§ 394. Certificate of title.**

The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of title of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. Except in case of a

corporation, it shall state whether the owner of the property, right, or interest registered is married or unmarried, and if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if he is under any other disability, it shall state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities, the particulars of all the estates, mortgages, trusts, liens and charges, to which such owner's title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions, trusts and forms recorded in the "book of covenants, restrictions, trusts and forms" provided for by this article. The form of the first certificate of title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words "first certificate," et cetera, shall be the words "transfer from number . . . . . ." (the number of the next previous certificate); also the words "first registered" . . . . . ." (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 26.

#### § 395. Title book.

The registrar shall keep a book or books to be known respectively as the "title book," wherein he shall enter all first and subsequent "original" certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance libers, now used in county clerks' and registers' offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates

in new volumes or title books, containing respectively cancelled and uncanceled certificates. All memorials and notations, that may be entered in the title book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. Whenever the term "certificate of title" is used in this article it shall be deemed as including all memorials or notations thereupon noted. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 27.

**§ 396. Duplicate certificate of title.**

The registrar shall, at the same time that he makes out his original certificate of title, make out an exact duplicate thereof, with the memorials and notations thereon noted, which shall be delivered to the owner and shall be known as the owner's duplicate. Any duplicate certificate, or certified copy of a certificate, shall be plainly stamped as such across its face.

**Derivation:** L. 1908, ch. 444, § 28.

**§ 397. Owner's receipt for certificate of title.**

For the purpose of preserving evidence of the handwriting of the owner of any registered property, right, or interest, it shall be the duty of the registrar to take from such owner, in every case where it is practicable so to do, his receipt for the certificate of title or whatever paper shall be issued to him, signed by such owner in person. When such receipt is signed in the registrar's office it may be witnessed by the registrar or some deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgment of deeds. When so signed and witnessed or acknowledged, such receipt shall be prima facie evidence of the genuineness of such signature.

**Derivation:** L. 1908, ch. 444, § 29.

**§ 398. Certificate to include dealings pending registration.**

In every case of initial registration, the certificate of title shall include all dealings with the real property, and all statutory or other liens filed against the same, subsequent to the filing of the application, except when they are modified or set aside by a judg-

ment, decree or order of the court. On and after the filing with the registrar of the notice of application for the registration of any real property, and until the same is registered, or the application is denied, dismissed, or discontinued, all papers which are required or permitted by this article to be filed against registered property, except the papers in the action, shall be filed with the registrar as if the property were registered. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 30.

**§ 399. Certificate of title as evidence.**

The certificate of title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the judgment of registration shall be received as evidence in all the courts of the state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 31.

**§ 400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.**

A person who receives a certificate of title pursuant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from

all incumbrances, charges, trusts, liens and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration.

Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 32.

**§ 401. Registered property not affected by prescription or adverse possession.**

No title to registered real property, in derogation of that of the registered owner, shall be acquired by prescription or adverse possession.

Derivation: L. 1908, ch. 444, § 33.

**§ 402. Fraud; notice only by registration.**

Except in case of fraud and except also as herein otherwise provided, no person taking a transfer of any registered real property or of any estate or interest therein or lien or charge thereon from the registered owner shall be required to inquire into the circumstances under which, or the consideration for which such owner



or any previously registered owner had the title registered, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

**Derivation:** L. 1908, ch. 444, § 34.

**§ 403. Memorial to be carried forward.**

Whenever a memorial or notation has been entered as permitted by this article, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this article.

**Derivation:** L. 1908, ch. 444, § 35.

**§ 404. Registered property to remain registered.**

The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article, and all amendments and alterations thereof, and all dealings with the property so registered, or any estate, right or interest therein, after the same has been brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article. (Former § 404 repealed and new § 404 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 36.

**§ 405. Registered property subject to same rights and burdens as unregistered property.**

Registered real property and every estate, right and interest therein shall be in all respects subject to the same rights, burdens and incidents as unregistered real property, except as otherwise expressly provided in this article or any amendment thereof.

**Derivation:** L. 1908, ch. 444, § 37.

**§ 406. Transfers of registered property.**

A registered owner of real property, in order to transfer his whole estate or interest therein or any part of parcel thereof, or any undivided interest therein shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the transfer the registrar shall enter such statement as a memorial upon the proper original certificate, provided that such statement is not more than one folio (one hundred words) in length. He shall then make out and register as herein provided a new certificate and also an owner's duplicate certifying the title to the estate or interest in the property conveyed to the transferee and shall enter upon the original and duplicate certificate the date of the transfer, the name of the transferee and the number of the new certificate, and shall stamp across the original and surrendered duplicate certificates the word "cancelled." If the parties in interest fail to agree upon the statement to be entered upon the certificates, the registrar shall refuse to make the transfer until directed by the court as herein provided. Title to such property shall not pass by such transfer until the transfer is registered as prescribed by this section. Any instrument of transfer or mortgage of an estate in fee simple in registered property shall contain an express statement, after the description of the grantor or grantors, mortgagor or mortgagors, as to whether or not such party or parties are married or unmarried; and no instrument of transfer or mortgage which does not contain such statement shall be registered. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 38.

**§ 407. Certificate as to part of property remaining after transfer.**

When only a part of the property described in a certificate is transferred, or some estate or interest therein is to remain the transferrer's, a new certificate shall be issued for such part, estate

or interest so remaining and belonging to him; or if the property is so described as to permit it, the property transferred may be cancelled on the certificate of the transferrer without the issue of a new certificate for the residue. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 39.

**§ 408. Book of covenants, restrictions, trusts and forms.**

Each registrar shall provide a book to be known as the book of covenants, restrictions, trusts and forms. This book shall be bound in a substantial manner and the pages thereof shall be Crane's parchment paper or its equal. Any person may have recorded in this book any covenant, restriction, trust or form he may present for that purpose on payment to the registrar at the rate of fifty cents per folio. The covenant, restriction, trust and form so entered shall be numbered consecutively and shall be written or typewritten in the book with India ink or other permanent ink in a clear and legible manner under the number given to it. References in any documents issued by the registrar to any covenant, restriction, trust or form recorded in this manner shall be as follows:

Subject to restriction, (or covenant, trust or form) recorded under number.....in the book of covenants, restrictions, trusts and forms, in the registrar's office of this county. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 40.

**§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.**

Every paper filed with the registrar shall be given a serial number in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

First. The serial number;

Second. Day of filing;

Third. Filing number of application (complaint) to which it relates if the registration proceedings are still pending;

Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;

Fifth. Kind of paper filed;

Sixth. Name, place of residence with street number, if any, and post-office address of the person in whose interest the paper is filed.

Every paper filed with the registrar affecting property for which registration proceedings are pending shall be kept by the registrar with the application. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Application number.....

This certifies that the following papers have been filed in the office of the registrar of ..... county affecting, or in connection with an action to register the title to the following described real property, to wit:

(The description to appear here.)

Character of paper.	When filed.	Filing number.

A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting the title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names, places of residence with street numbers, if any, and post-office addresses of all persons in whose interest applications for registration of title are filed; the names, places of residence with street numbers, if any, and post-office addresses of all persons to whom any interest, right, or power in real property is granted or released; and the names, places of residence with street numbers, if any, and post-office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of application to which they relate (if application is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall be kept by blocks of all owners of registered property with a reference to the certificate numbers in which the properties are registered. The registrar shall also keep an index of all properties registered under this article in which such registered properties shall be indexed according to a brief description thereof. In any place, however, where there is an official land map showing a division into blocks, such index shall be made according to block numbers; and if a system of indexing by lot numbers is used, the index lot numbers shall be shown. Such index shall also give the number of the certificate of title of such properties. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 41,

**§ 410. Notice of filed papers.**

All papers filed by the registrar, and indexed and entered by him pursuant to this article, shall be of equal effect as to notice, in the order of their filing as shown by their filing numbers, as are similar papers when recorded by county clerks or registers under the recording acts. Should an action for registration be discontinued or otherwise terminated without registration, an order of court to that effect shall be filed with the registrar, who shall at once cause all the papers relating to the title to the property affected, filed with him, except the notice of application and said order, to be recorded or filed, and indexed, by the county clerk or register (as the case requires) in the order of their filing, on payment of the statutory fees. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

**Derivation:** L. 1908, ch. 444, § 42,

**§ 411. Addresses of interested parties; notice.**

On every paper or instrument filed with the registrar there shall be indorsed the name, place of residence with street number, if any, and post-office address of the person in whose behalf it is filed. The address may be changed from time to time, by such person filing with the registrar a written notice of such change. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 43.

**§ 412. When a transfer is deemed to be registered.**

Every transfer of registered property shall be deemed to be registered under this article when the new certificate to the transferee shall have been entered as in the case of first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the title book upon the last certificate of title to the property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 44.

**§ 413. New certificates of title.**

Upon the application of any owner of registered property held under one or more certificates of title and delivering up of such

certificate or certificates, the registrar shall issue to such owner, at his option, separate certificates, each for a portion of such property in accordance with such application; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of such property so delivered up a memorial setting forth the occasion of the cancellation thereof and referring to the number or numbers of the new certificates of title so issued. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 45.

**§ 414. Loss of owner's duplicate.**

If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate.

**Derivation:** L. 1908, ch. 444, § 46.

**§ 415. Mortgages, leases and other liens and charges; may be registered.**

Any mortgage, lease for a term of over one year, contract to sell or other instrument intended to create a lien, incumbrance, trust or charge on registered property or any right or interest therein, may be registered as herein provided.

**Derivation:** L. 1908, ch. 444, § 47.

**§ 416. Proceedings to register mortgage, lease or other lien or charge.**

On the filing of the instrument in the registrar's office and the production of the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the mortgage, lease or other lien or charge, the register shall enter such statement upon the proper certificate in the title book, provided such statement be not more than one folio (one hundred words) in length, and also he shall enter upon the owner's certificate

a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar who shall deliver to the person filing such instrument a certified copy of such instrument certified to be the "registration copy." The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. If the parties in interest fail to agree upon the memorial so to be made by the registrar, he shall refuse to make any memorial thereof until directed by the court to do so, as herein provided. Any mortgage registered pursuant to this section shall be subject to the provisions of article eleven of the tax law (being chapter sixty-two of the laws of nineteen hundred and nine), and amendments thereof in the same manner as if said mortgage were recorded, as provided by section two hundred and fifty-three of said tax law. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 48.

**§ 417. Judgments, decrees, attachments and other liens to be noted on certificate.**

No judgment, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of title in the title book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate of registration of the title to the property to be affected and bound thereby by virtue of such memorial on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or



charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 49.

**§ 418. Assignment of mortgage, lease, or other lien or charge.**

The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, and the production of the registration copy of the instrument, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, the registrar shall enter in the title book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the registration copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 50.

**§ 419. Release, discharge or surrender of charge or incumbrance.**

A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected in the same way as is above provided in the case of a transfer. In case only a part of the charge or only a part of the property charged is to be released, discharged or surrendered, the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the registrar shall plainly stamp across the instrument on file, and on the memorial thereof, and on the registration copy produced, the word "cancelled," and shall sign the same. Any tax, water rent or assessment, subject to which the title has been registered and which has been noted on the certificate of title as provided in section three hundred and ninety of this chapter, may be released and discharged in the same

way upon a receipt therefor being issued and duly certified by the receiver of taxes or collector of assessments and arrears or other duly authorized officer, as the case may require, and delivered to the registrar and filed in his office. The receiver of taxes or collector of assessments and arrears or such other duly authorized officer, as the case may require, upon demand of any owner of registered property, shall execute, certify and deliver to such owner such receipt when any such tax, water rent or assessment has been paid upon such registered property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 51.

**§ 420. Enforcement of mortgages, charges, liens and incumbrances.**

All charges, liens and incumbrances on registered property, or on any estate, right or interest in the same, and all rights therein may be enforced as now allowed by law; and all laws with reference to the foreclosure, release or satisfaction of mortgages shall apply to mortgages on registered property or on any estate, right or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce such mortgage, charge, lien, or incumbrance is filed in the registrar's office and a memorial thereof entered on the certificate in the registration book, the pendency of such suit shall not be notice to the registrar or to any person dealing with the property or any right or interest therein.

**Derivation:** L. 1908, ch. 444, § 52.

**§ 420-a. Registration under judicial sales.**

Where a judgment or order in any action or proceeding directs or authorizes a sale of real property, the title to which is then a registered title, the officer appointed to conduct such sale shall be a person who is a duly qualified official examiner of titles, pursuant to the provisions of this article. It shall be the duty of such officer, prior to the date fixed by him for the sale of such property, to examine the title thereto in so far as it is affected by the action or proceeding in which such officer is appointed, and to prepare a report thereon, verified by him, stating his approval of

such title or his objections thereto. At least one week prior to the day fixed for such sale, such officer shall serve a copy of such report on the attorney for the plaintiff, petitioner or applicant in such action or proceeding. Another copy of such report shall be delivered by such officer to the purchaser on such sale. If in such report such officer approve such title, then unless ten days before the date fixed by the terms of sale for the delivery of the deed the purchaser shall file with the clerk of the court directing such sale a notice that he intends to refuse to complete his purchase of such property, the officer shall apply forthwith to such court, without notice, for an order confirming such sale, and giving such directions to the registrar as may be necessary to enable such registrar to issue a due and proper certificate of title to the purchaser. Upon such application, the officer must submit to the court, to be filed with such order, the original of such report together with proof of service thereof upon such attorney and upon such purchaser, and also his proposed deed for the court's approval; and such approval if obtained shall be noted upon such deed by the court. The fees of such officer as now fixed by law shall be held to be full compensation to such officer, and no extra fees shall be allowed him for his services as official examiner under this section. The registrar upon production of a certified copy of the order approving the report of such officer, and upon receiving the deed thus approved by the court, shall register the title in accordance with such order. (Added by L. 1916, ch. 547, in effect May 15, 1916.)

**§ 421. Powers of attorney to be filed and registered.**

Before any person can convey, charge, incumber or otherwise deal with any registered property, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a memorial thereof shall be entered upon the certificate in the title book, in like manner as in the case of a charge or incumbrance. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 53,

**§ 422. Reference of doubtful matters to the court.**

When the registrar is in doubt, and the parties in interest fail to agree as to the proper memorial to be made in the title book of any deed, mortgage or other voluntary instrument presented for registration, the questions shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. In any judicial proceeding affecting property, the title to which is then a registered title, the court upon the application in writing of any party or parties in interest after due notice to all other parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of any memorial that should be made by the registrar in the title book because or as the result of such proceeding; and the registrar, upon the production of a certified copy of such order, shall make the proper memorial in accordance with such order. After making such memorial in the title book the registrar shall also make all other memorials on existing certificates or make and deliver any new certificates according to the circumstances and in the manner required herein. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 54.

**§ 423. Death of owner of registered property; transfer of property.**

Upon the death of an owner of registered real property or any estate, right, or interest therein, his heirs-at-law or devisees, at any time after the due entry of a decree of the surrogate's court, probating his will and granting letters testamentary thereon or granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may make application to the court for an order directing the registrar in what manner the title shall be registered, and in whose name or names it shall be registered; and as to the new certificate or certificates to be issued thereon. Two or more heirs or devisees may unite in one such application. On such application the court, after due notice to all parties in interest and

a hearing, if necessary or proper, may enter an order in accordance with said application. On such application the certificate of title of the deceased owner, or a duplicate copy thereof, shall be sufficient and conclusive evidence of his title at the time of his death, and no other evidence of the title up to that time may be produced. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 55.

**§ 424. Certificate of title during settlement of estate.**

Any new certificate of title, made and entered as prescribed in the preceding section before the final settlement in the surrogate's court of the personal estate of the deceased owner of the real property, shall state expressly that it is made and entered because of transfer of the title from the last certificate by descent or devise, and that such personal estate is in process of settlement. After the final settlement of such personal estate in the surrogate's court, or after the expiration of the time allowed by the code of civil procedure for bringing a proceeding for selling, mortgaging or leasing the real property of the deceased owner for the payment of his debts, the heirs-at-law or devisees may apply to the court in the registration action for an order directing the cancellation of said memorial upon the certificate, which memorial showed that the personal estate was in the course of settlement, and the court, after being satisfied by due proof that said personal estate is completely settled or that said time to apply for selling, mortgaging or leasing the said real property has expired, shall make an order directing the cancellation of said memorial; but the liability of heirs or devisees of registered property, or of such property itself, for claims against the deceased or his estate shall not be in any way diminished or changed by this article. [(Amended by L. 1916, ch. 547, in effect May 15, 1916.)]

**Derivation:** L. 1908, ch. 444, § 56.

**§ 425. Title derived through execution of a power in a will.**

When the will of a deceased registered owner of real property, or of any estate, right or interest therein, empowers the executor or

executors to sell, incumber or otherwise deal with such property, estate, right or interest, it shall not be necessary for such executor or executors to be registered as the owner or owners thereof; but any person who acquires title through or by virtue of the execution of such power may have such title registered, by proceeding in the same manner as heirs or devisees of a deceased registered owner of real property, as directed and provided by this article.

**Derivation:** L. 1908, ch. 444, § 57.

#### **§ 426. Assurance fund.**

Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof which value shall be determined by the registrar but shall not be less than the amount of the last assessment for local taxation. All moneys received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the city chamberlain), as an assurance fund for land registered in his county and shall be treated in the same manner as are other funds received for local taxation or for the reduction of the county or city debt. Said treasurer (or city chamberlain) shall keep a separate account of such funds and report annually thereon as required by law in reference to other funds in his hands. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 58.

#### **§ 427. Compensation from assurance fund.**

Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorial in the title book, shall have a cause of action against the county treasurer (in New York city the city chamberlain) to recover compensation for such loss or damage. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 59.

**§ 428. Action against assurance fund.**

Any allowed claim for indemnity shall be paid in the same manner as other claims against the county. In the city of New York a claim shall be passed upon and approved by the registrar and by the corporation counsel of the city before payment is allowed. The rejection of a claim by the proper county officials (or in the city of New York by the registrar and corporation counsel) shall not preclude the claimant from bringing an action to recover such claim. No claim or judgment on a claim for indemnity shall be binding on the county or on the county treasurer (in New York city the city chamberlain) for an amount exceeding the amount credited to the assurance fund. If the amount credited to the assurance fund is insufficient to pay the claim or judgment in full, the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into said assurance fund. If any right of action against any person for damages for negligence or other cause, or under any covenant or contract of warranty or guaranty or otherwise, exists in favor of the person to whom indemnity is paid, the county treasurer (in New York city the city chamberlain) shall be deemed to be subrogated to such right and may bring an action to recover thereunder. Any amounts recovered by the county treasurer (in New York city the city chamberlain) under such an action shall be credited to the account of the assurance fund. Until the assurance fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 60.

**§ 429. Restrictions on claims against assurance fund.**

No person shall recover from the assurance fund any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended

because of any disability. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 61.

**§ 430. Penalties for fraudulent acts or false certificates.**

Whoever fraudulently procures or assists in fraudulently procuring, or is intentionally privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the registration or other book kept in the registrar's office, or of any erasure or alteration in any entry in said book, or in any instrument authorized by this act, or knowingly defrauds, or is intentionally privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land, shall be guilty of a felony and shall be punished by a fine of not exceeding five thousand dollars, or imprisonment for a period not exceeding five years, or both, in the discretion of the court.

**Derivation:** L. 1908, ch. 444, § 62.

**§ 431. Forgery and fraudulent stamping; penalty.**

Whoever forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, handwriting of any officer of the registrar's office; or fraudulently stamps or procures to be stamped, or assists in stamping, any document with any forged seal of said registrar, or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person, or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged, or swears falsely concerning any matter or proceeding made or done in pursuance of this article, shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for a period not exceeding five years, or by a fine not exceeding five thousand dollars, or both, in the discretion of the court.

**Derivation:** L. 1908, ch. 444, § 63.



**§ 432. Fees to be charged.**

The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the notice of application, including entering it in the entry-book, indexing it, and entering it in the tickler certificate book, one dollar.

(b) Filing and indexing the judgment and issuing certificates of title in accordance therewith, and indexing same, five dollars.

(c) Entering, filing and indexing any lien, incumbrance or charge pending registration or subsequent thereto, one dollar.

(d) Entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another — for each new certificate issued, two dollars.

(e) Entering, filing and indexing any instrument cancelling any lien or incumbrance on a certificate, fifty cents.

(f) Making any additional certificate, fifty cents.

(g) Entering, filing and indexing a caution, one dollar.

(h) Services of the official examiner of title, when appointed by a register or county clerk, or by the court, one-tenth of one per centum of the value of the property, and ten dollars in addition thereto.

(i) Making, certifying and delivering a "registration copy" of any instrument, as provided by section four hundred and sixteen hereof, a fee computed at the same rate as the fees allowed by law for certifying a copy of a deed.

(j) Furnishing printed forms or for any services for which fees are not herein specified such reasonable charge as may be fixed by the registrar subject to the revision of the court. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

**Derivation:** L. 1908, ch. 444, § 64.

**§ 433. Construction of article.**

This article shall be construed liberally, so far as may be necessary for the purpose of effecting its general intent.

**Derivation:** L. 1908, ch. 444, § 65.

**§ 434. Form for official examiner's report of title.**

The examiner's report of title shall be substantially in the following form with such additions or modifications as may be necessary by reason of laws concerning records affecting the particular locality in which the property is situate and with such additions or modifications as the court may require or deem proper.

**OFFICIAL EXAMINER'S REPORT OF TITLE.**

State of New York, }  
County of ..... } ..... day of ....., 19 ..

..... reports and  
certifies that title to the property herein described in this report  
is vested in .....

.....  
clear of all liens, incumbrances, defects, rights and interests,  
except as below noted. A full statement has been made of all  
liens, incumbrances, defects, rights and interests including re-  
strictions, special agreements, covenants, easements, taxes sur-  
veys, judgments, mortgages, and encroachments as they arise in  
the order of this report, which statement is found in the follow-  
ing pages of this schedule. A brief summary statement of the  
same is as follows (such summary to be here set out in the order  
of the paragraphs of this report):

The names and post-office addresses of all persons interested,  
or claiming to have any rights or interests in said property and  
the nature of their interests are as follows:

Names.	Post-office address.	Nature of interest.
.....	.....	.....
.....	.....	.....
.....	.....	.....

The names of the other persons interested, or claiming to have  
any rights or interests, in said property whose post-office addresses  
and whereabouts are unknown and cannot by diligent inquiry be  
ascertained are as follows:

Names.	Nature of interest.
.....	.....
.....	.....

The facts as to the inquiries and efforts made to find other persons having any rights or interests in said property and the diligence used to ascertain whether or not those known can be served personally with a summons within the state, are set forth in the following detailed statement:

# DETAILED STATEMENTS.

1. Description. The following is an accurate diagram of the property proposed for registration in this action, the same having been copied from a survey made by..... dated.....

The above property is more particularly bounded and described as follows: .....  
.....  
.....

2. Records examined. Records necessary to determine the ownership of the above-described property and all liens and incumbrances have been examined in the offices of the register; clerk of the United States Circuit court of the..... district; clerk of the United States district court of the..... district; United States loan commissioners; county clerk; tax collector; comptroller; county treasurer and (state here the other offices in which search has been made in addition to the above). The results of the examination of the records of the various offices above described are herewith set forth in detail separately. In case it has been found impossible to get necessary information to complete this certificate in any respect, a detailed statement has been given showing what efforts have been made.

3. Register's (or county clerk's) office. Search has been made against the following persons for the periods set opposite their respective names, for all conveyances, mortgages unsatisfied of record, assignments of unsatisfied mortgages returned hereon, leases and other instruments of record affecting said premises  
.....  
.....

A chain of title is given below. It also shows all agreements and instruments of record affecting said property. The special covenants and restrictions, unsatisfied mortgages and agreements appearing in said chain are set forth in detail after said chain of title together with all liens, incumbrances and defects in the register's (or county clerk's) office. (Here set forth chain of title, et cetera, as above.)

#### PARTICULARS OF EACH MORTGAGE UNSATISFIED.

Mortgagor,

Mortgagee,

Amount,

Dated,

Recorded,

Liber,.....; Page, .....; Sect., .....; Block, .....

(Here set forth all assignments of said mortgage; also any objections to or defects in such assignments.)

4. United States circuit and district courts. Search has been made in the United States circuit and district courts of the district for judgments and decrees as follows:

Names.

From.

To.

Upon such search the following unsatisfied judgments appear:

.....  
 .....  
 .....

Search has also been made in the United States district court of the.....district against all the names appearing in the register's (or county clerk's) search above for petitions in bankruptcy for the same periods as shown in register's (or county clerk's) search above so far as said periods fall within the times during which the bankruptcy acts of eighteen hundred and forty-one, eighteen hundred and sixty-seven and eighteen hundred and ninety-eight were in force.

Upon said search the following petitions appear:.....

.....  
 .....  
 .....

5. Mortgages to the United States loan commissioners. Search has been made for such mortgages against all the names appearing in the register's (or county clerk's) search and for the same periods. Upon such search the following unsatisfied mortgages appear: .....

6. County clerk's office. Search has been made in this office for judgments, decrees and transcripts of judgments and decrees against the following names for the following periods:

Names.	From.	To.
.....	.....	.....

Upon such search the following unsatisfied judgments are returned, the marginal notes showing what disposition has been made of them by the examiner: .....

Search has been made in this office for ..... years last past for mechanics' liens affecting said premises. Upon such search the following unsatisfied mechanics' liens appear: .....

A search has been made against the persons named in the search in paragraph two and for the same periods for notices of lis pendens; certificates of sheriff's and marshal's sales; insolvent assignments; general assignments; foreclosure by advertisements; appointment of receivers; appointment of trustees, of absconding concealed nonresident or imprisoned debtors; exemptions under the homestead act. A further search for sheriff's certificates has been made against each owner for a period of eleven years subsequent to the search in the register's office and for foreclosure by advertisement to date. Such instruments and notices have been discovered as follows, the marginal notes showing what disposition has been made of them by the examiner: .....

.....	.....
.....	.....

7. Search has been made for one year last past in the register's (or county clerk's) office for chattel mortgages and conditional bills of sale affecting the premises. Upon such search the following unsatisfied mortgages and conditional bills of sale appear: . . . .

8. Tax offices. Taxes, assessments and water rates unpaid are as follows:

Year.	Amount.
.....	.....
.....	.....

(State in detail all offices, local or otherwise, in which records of taxes, assessments or water rates are kept, in which searches have been made.)

Sales for taxes, assessments and water rates have been had as follows:

(State in detail offices in which searches have been made.)

To.	Date.
.....	.....
.....	.....

9. Here insert detailed statement of all searches for liens or incumbrances other than those above set forth. . . . .

10. Other interested persons. The following persons who do not reside on the premises claim interests or rights in said property, the nature of their claim in law or equity being herewith set forth in detail:

Name.	Address.	Nature of claim.
.....	.....	.....
.....	.....	.....

The names and post-office addresses of the owners of the adjoining parcels of land are, as far as reasonably obtainable by inquiry on the premises, given below as shown in the diagram :

.....

.....

11. Inspection of property. An inspection of the premises shows the property is occupied by the persons whose names and post-office addresses are set forth below; said occupants having described their interests and claims in said premises as follows:

Names.	Post-office address.	Nature of claim.
.....	.....	.....
.....	.....	.....

An inspection of the plumbing, drains and sewers shows the following easements:

.....

.....

An inspection of the walls, halls, roofs, yards and fire-escapes shows easements as follows:

.....

.....

12. Other matters which may or may not be of public record not included above and affecting said title are set forth as follows:

State of New York,    }  
County of .....,    } ss.:

.....

being duly sworn, deposes and says that he is a duly qualified official examiner of title, licensed to practice as such under and by virtue of the laws of the state of New York; that he has personally examined the title to the property described in the foregoing report, and has made the foregoing report, and that the statements contained in said report are true in every particular

to the best of his knowledge and belief; and that he has employed all usual means and methods for ascertaining the truth thereof and of all the facts and circumstances affecting and concerning the title to said property.

Sworn to before me, this .....

day of ....., 19..

.....

(Former § 434 repealed and new § 434 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547, in effect May 15, 1916.)

**§ 435. Form for certificate of title.**

The registrar's certificate title shall be in the following form:

No. ....

First registered .....

**CERTIFICATE OF TITLE.**

(First Certificate) or (Transfer from No. ....) .....

.....

State of New York, }  
County ....., } ss.:

.....  
of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal)

.....,

Registrar.



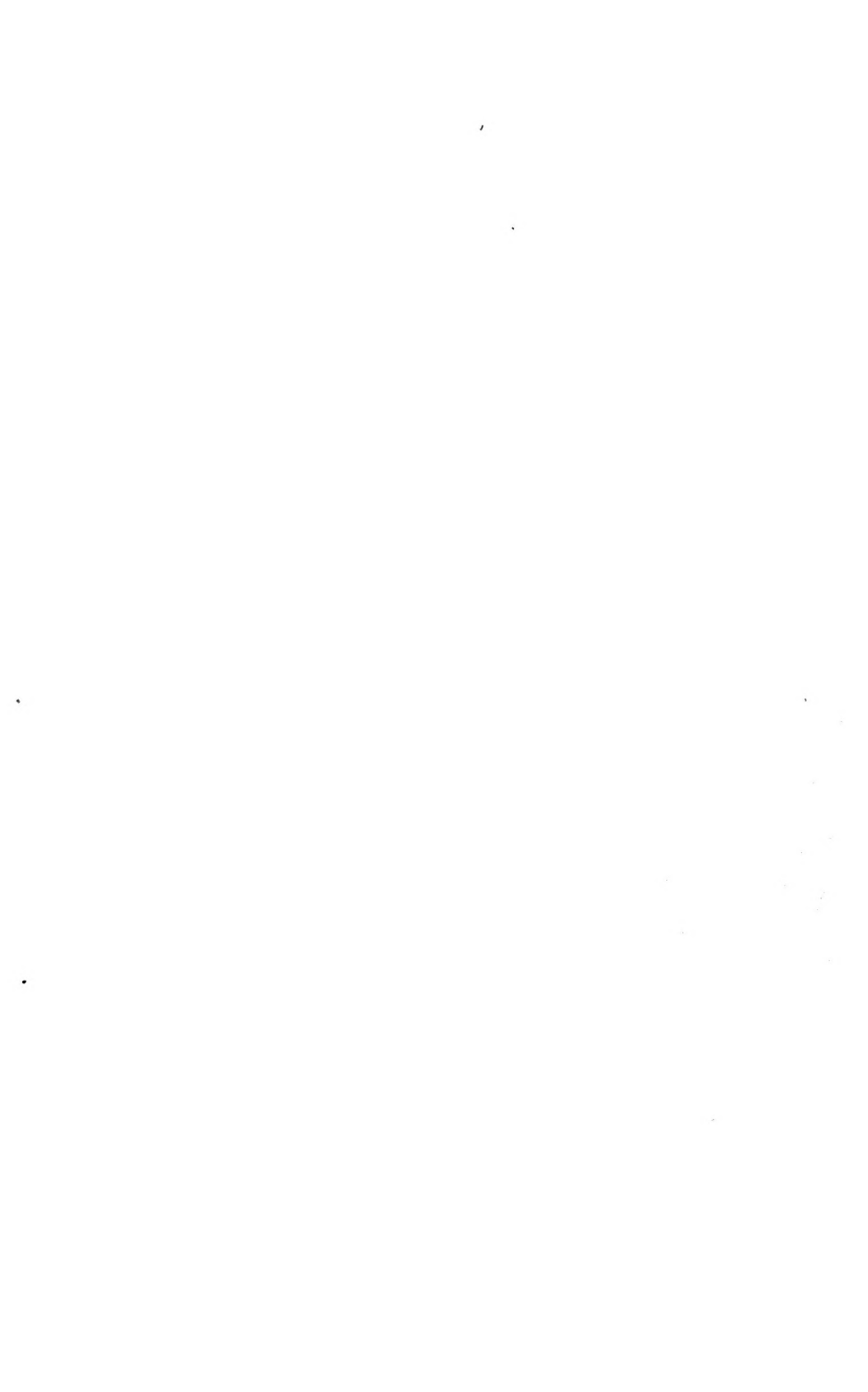
## MEMORIALS

of estates, easements and charges on the land described in the above certificate of title.

Document number.	Kind.	Running in favor of	Terms.	Date of Registration.	Signature of Registrar.

(Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, Schedule "B."



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